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CROMPTON, SEAGER & TUFTE, LLC  
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SUITE 800  
MINNEAPOLIS MN 55403-2420

2/15/08

*In re* Application of:  
Ye, Ting Tina et al  
Serial No.: 09/839,065  
Filed: April 20, 2001  
Docket: 1001.1471101  
Title: MICROCATHETER WITH IMPROVED  
DISTAL TIP AND TRANSITIONS

DECISION ON PETITION

This is a decision on the petition filed on Apr. 27, 2004 by which petitioner requests withdrawal the finality of the Office action of Jan. 28, 2004 and issue a new complete Office action. The petitioner states that the final rejection is premature because it was incomplete. The petition is being considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

In the petition, petitioner argues that the final action of Jan. 28, 2004 is not a proper final Action as the examiner fails to explain why and under what rule the examiner is interpreting "shapeable by thermoforming techniques" as a product-by-process limitation. Petitioner requests the finality of the Office Action be withdrawn and a new non-final Office action be issued.

The record shows that:

- 1) On Aug. 12, 2003, the examiner issued a non-final Office action rejecting all claims under 35 U.S.C. 102(e) and 103(a) based on Samson et al (U.S. Pat. 6,090,099) and in view of Nita et al (U.S. Pat. 5,951,539). The examiner also interpreted and held that some claim limitations are directed to a product by process limitation.
- 2) On Nov. 12, 2003, the applicant filed a response without any amendment to the claims and argued in essence that Samson et al patent does not disclose all the elements of independent claim 1.
- 3) On Jan. 28, 2004, the examiner issued a final Office action rejecting all claims under 35 U.S.C. 102(e) and 103(a) based on Samson et al (U.S. Pat. 6,090,099) and in view of Nita et al (U.S. Pat. 5,951,539). The final rejection was essentially the same as the non-final Office action.
- 4) On Apr. 27, 2004, the current petition was filed to request the finality of the Office Action be withdrawn and a new non-final Office action be issued.

### Discussion and Analysis

With regard to the alleged rejection, this appears to be a disagreement in claim interpretation which is an appealable issue rather than a petitionable matter, presently pending at the Board of Appeals and Interferences (37 CFR 1.181(a)(1))<sup>1</sup>. It is noted that the examiner had responded to the applicant's/appellant's assertions in the Examiner's Answer to which appellant was able to further respond in a Reply Brief.

A review of the record shows that the instant petition was filed more than two months after the mailing date of the final Office action of Jan. 28, 2004. Pursuant to 37 CFR 1.181(f)<sup>2</sup>, the petition is not timely filed since the petition was not filed within two months of the Office action to which the complaint refers. It is, therefore, dismissed as untimely.

### Conclusion

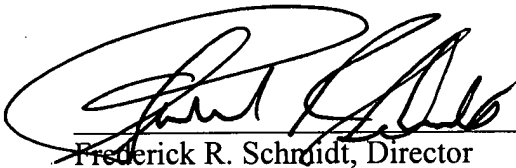
In view of the record, petitioner's request to withdraw the finality of the Office action dated Jan. 28, 2004 is dismissed as untimely.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181".

The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3763 for completing the remainder of the tasks as set forth in the Order Returning Undocketed Appeal to Examiner.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED.

  
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Frederick R. Schmidt, Director  
Technology Center 3700

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<sup>1</sup> 37 CFR 1.181(a)(1) states: Petition may be taken to the Director: From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination preceding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court.

<sup>2</sup> 37 CFR 1.181(f): The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.